

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANYWHERE COMMERCE, INC. and)
BBPOS LIMITED,)
 Plaintiffs,)
 v.) CIVIL ACTION NO.:
INGENICO INC., INGENICO CORP.) 1:19-cv-11457-IT
and INGENICO GROUPS, SA,)
 Defendants.)

)

The VIDEO DEPOSITION of MICHAEL KRON, taken in the
above-entitled cause, before Susan Steudel, official
reporter, on the 30th day of November, 2021

Q. If it's not the CTO and his team, who is it?

A. I'm just -- I'm just -- I'm not -- I'm just thinking. There might be other people that we've worked with. Well, depends. In the last four years it's been the CTO and his team, and then otherwise it could be Worldnet. Worldnet is another one. So the gateway provider also does development for us. So between Worldnet the gateway provider and their group of programmers and Dan McCann and his group of programmers I believe we've captured the players that develop the programming and development of hardware and software.

Q. What about hardware customizations? Who does that?

A. BBPOS.

Q. So how does that work? If you have a customer, take the Bank of America example. Customer comes to you. They say, hey, we want this product, but it has to look like this. And how do you make that into the product that the customer wants?

A. We bring BBPOS into the conversation. We all sign NDAs and BBPOS tells us what it's going to cost on their end. I believe we typically would add a mark-up. The Bank of America Merchant Services solution, this is going back before I was CEO. I was CFO at the time. I would imagine, I just don't recall exactly that we would

Q. Have you ever tried to get BBPOS to create an unattended solution for you?

A. I don't believe we did.

Q. Any reason you didn't ask?

A. Is there any reason we didn't ask? No. No particular reason. We just know -- every new device is very difficult to develop and get certified. Sometimes it can take two years to get a device from scratch ready for prime time and certified. Could take easily two years in many cases. So it's easier to deal with someone who shows up who has a device. It's all certified, and I don't have to wait for two years. So that's basically why. We're not really involved in the BBPOS product development cycle. They understand the market better than we do, I'll say.

Q. Does BBPOS sell devices that AnywhereCommerce does not buy from it?

A. I believe they do sell devices that AnywhereCommerce does not buy from them, yes. Definitely.

Q. And what's the nature of the commercial relationship between BBPOS and AnywhereCommerce for these mobile credit card readers?

A. Well, we have a supplier agreement which is a distribution agreement. And then they -- and there's also a patent license. So on one side we're a distributor and

have marked it up and charged our own fee.

Q. BBPOS produces all of the mobile credit card readers that AnywhereCommerce sells; is that right?

A. Yes.

Q. Has that always been true?

A. There was a period of time where we worked with a company called Spire out of the UK, and we sold some of their hardware. It wasn't a very successful initiative so we ceased to sell their hardware.

Q. When did you sell Spire's hardware?

A. Approximately 2016, '17, '18.

Q. Why did you go to them?

A. Well, we get approached a lot, and it was different hardware. It was something called "unattended hardware." Unattended is when you're at the gas station, for example. You're at the gas pump and there's no person interacting with you. It's unattended. So you do your own transaction. So they had some -- like vending machines are unattended. So they had some unattended solutions that BBPOS does not have so we attempted to get into the unattended hardware.

Q. And that was not successful?

A. And it was in the LAC region, Latin American/Caribbean. So it wasn't in the States; it was in the Latin American/Caribbean, and it wasn't successful.

then on the other side they're a patent licensee.

Q. So how does that work? Do you -- let me break it down into bites that I might be able to comprehend. So for all of the BBPOS mobile credit card readers, BBPOS pays a royalty to AnywhereCommerce?

A. Not all of them. The ones that they believe speak to the patents.

Q. Who decides that?

A. Ben Lo.

Q. Does he provide a reporting to AnywhereCommerce with respect to BBPOS's exploitation of these patents and an accounting of the royalties associated with that?

A. Yes. To the 4361423, yes.

Q. How often does he do that?

A. It's an annual reporting. Sorry. It's quarterly. It's quarterly. Sorry, it's quarterly. I don't believe it was ever monthly. I believe it's always been quarterly.

Q. Is that quarterly report accompanied by a payment of royalties associated with the reported activity?

A. Yes. There might be a delay, but yes we've always collected on all the royalties that were earned.

Q. My question really is mechanical. Does BBPOS actually send AnywhereCommerce money or is it just treated as an offset to other transactions?

1 A. It's been mostly an offset to other transactions,
2 but there's invoicing. So we invoice them, and we might
3 offset it just for convenience sakes.

4 Q. Do you know what the royalty is for BBPOS's use
5 of these patents?

6 A. Are you asking me what the unit amount is,
7 or ...?

8 Q. Yes.

9 A. On the unit amount it's a -- it's a bit of a
10 formula, so I can't recall exactly because there's a
11 percentage up to a certain amount. And then another
12 percentage as the amount grows. And there's minimums as
13 well. There's a \$400,000 a year minimum to keep the
14 patent license alive. But the exact percentage, 4
15 percent, 5 percent, it's in that range.

16 Q. And has AnywhereCommerce, the holding company,
17 licensed its entire portfolio to BBPOS?

18 A. I don't remember how the wording is, but once --
19 it's only licensed from the family. Not any other patents
20 related to the family. So let's be clear about that. So
21 within the family I believe that once you've signed a
22 license all continuation patents I believe presumably fall
23 within the same license, and you don't have to come up
24 with a new agreement because it's part of the family.

25 Q. And when you talk about the family you're

1 referring to this -- the earliest provisional that was
2 granted and then continuation applications from that; yes?

3 A. Yes.

4 Q. And so if I understand what you're saying, the
5 license grants BBPOS the right to use those patents and in
6 exchange BBPOS is to provide a royalty that has an annual
7 minimum of \$400,000 US; correct?

8 A. Yes.

9 Q. And it also provides presumably, if this would
10 exceed 400,000, it provides a percentage royalty based
11 upon unit sales; is that fair?

12 A. Yes.

13 Q. And so if there are a lot of units sold you'd
14 apply whatever the percentages are to those numbers of
15 units and you would get some dollar figure that would be
16 the overall royalty amount; correct?

17 A. Yes.

18 Q. And that -- but the minimum is an annual minimum;
19 yes?

20 A. Yes.

21 Q. And it doesn't make any difference to the amount
22 of royalty which or how many of the patents are being
23 utilized in a given unit; is that fair?

24 A. Yes. Yes, that's fair. It doesn't change the
25 formula.

1 Q. So either a unit falls within that patent license
2 or it doesn't. You don't get double royalties if they use
3 two of the patents?

4 A. No.

5 Q. And how does the -- well, back up. Has it ever
6 been the case that BBPOS has paid in excess of the annual
7 minimum under its royalty agreement?

8 A. It's possible at the beginning that it did. It
9 hasn't paid in excess of \$400,000 in many, many years.
10 I'm not sure if I -- I believe maybe at the beginning, but
11 I'm not 100 percent sure. But in 2011, 2012, '13, they
12 might have exceeded it in one or more years.

13 Q. Between that time, in the early days when they
14 were either coming close or perhaps exceeding that and
15 now, is BBPOS selling fewer units to AnywhereCommerce?

16 A. The patent license is not about the sales to
17 AnywhereCommerce, right. So are you asking an unrelated
18 question? The royalties earned are based on sales to all
19 companies other than AnywhereCommerce. But only in the
20 United States.

21 Q. And the limitation to the United States is
22 because these are US patents?

23 A. Yes.

24 Q. Does AnywhereCommerce, the holding company, or
25 anybody associated with AnywhereCommerce have any patents

1 that are non-US patents?

2 A. We were granted a patent in India just in the
3 last 60 days, and that's based on the same provisional
4 from 2009. It took approximately ten years for this to go
5 through the Indian patent system, and we were just granted
6 a patent in India. We're waiting for Europe to decide. I
7 believe that's it. Oh, we have Canada as well. Canada
8 also.

9 Q. You have issued patents from Canada?

10 A. For Canada. Yeah. We have issued patents for
11 Canada and that dates back many years.

12 Q. And there's a PCT or some other application
13 pending in Europe?

14 A. Yeah. There's an application through the PCT
15 pending in Europe. It's just taking a long time like
16 India took a long time.

17 Q. I didn't mention this at the beginning but I
18 probably should have. If you ever want to take a break,
19 we can take a break. We've been going for almost an hour
20 and a half. You don't need to tell me why. It's usually
21 probably a good idea just to stretch your legs so that we
22 can stay fresh. So if you'd like we can take a break or
23 we can keep going for a little bit.

24 A. We can keep going for now.

25 Q. So you corrected me and said well, wait, these